

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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YOSEF I. MUSTAFANOS, and SHIRLEY  
J. CLIFTON by and through YOSEF L.  
MUSTAFANOS, her legally appointed  
guardian,

Plaintiffs,

v.

THE STATE OF NEVADA, LYON  
COUNTY, P.J. BALTES, GREGORY  
KANTZ, ALBERT TORRES, DEBORAH  
JUNE STRODE, LAURA DEPAOLI,  
ANDREW STRODE, EDWARD  
ANDERSON, JD, LEON ABASTURI,  
DAVID O'MARA, AARON MOURITSEN,  
JAMES SHIELDS BEASLEY, JONATHAN  
KING, DAY WILLIAMS and DOES 1 thru  
10 inclusive,

Defendants.

Case No. 3:16-cv-00254-MMD-WGC

ORDER

**I. SUMMARY**

Plaintiffs, who are proceeding *pro se*, appear to sue everyone who has any connection with disputes between Plaintiff Yosef I. Mustafanos ("Mustafanos") and Defendant Deborah June Strode ("Strode") relating to their marriage and separation and the guardianship of Mustafanos' sister, Plaintiff Shirley J. Clifton ("Clifton"), along with other encounters between Mustafanos and certain Defendants. The Complaint is 60 pages in length and contains repeated allegations about these disputes. (ECF No. 1.) Plaintiffs assert they sue "The State of Nevada, by and through the actions of its Legislature, Judicial branch, Executive Branch, Judge Leon Abasturi," private attorneys

1 for Plaintiffs and for Strode, Under Sheriff Albert Torres and several deputies, and Lyon  
 2 County. (ECF No. 1 at 17.) It is no surprise then that several defendants — Albert Torres  
 3 (“Torres”) (ECF No. 9), Judge Leon Abasturi (“Judge Abasturi”) and the State of Nevada  
 4 (“State Defendant”) (ECF No. 12), P.J. Baltes (“Baltes”) (ECF No. 15), Andrew Strode  
 5 (ECF No. 18), Day Williams (ECF No. 29), Aaron Mouritsen (ECF No. 50) and Strode  
 6 (ECF No. 69) — have moved for dismissal or a more definite statement.<sup>1</sup> Plaintiffs initially  
 7 fail to timely respond to these motions, and then filed multiple subsequent responses,  
 8 which resulted in motions to strike their improper responses. Plaintiffs have moved for  
 9 default judgment against Strode (ECF Nos. 75, 89); Strode, who is proceeding *pro se*,  
 10 has moved for summary judgment (ECF No. 71). Plaintiffs have also filed three motions  
 11 for preliminary injunctive relief. (ECF Nos. 3, 37, 55.) Because of the prolix nature of the  
 12 Complaint and the number of motions to dismiss, the Court considers the Complaint and  
 13 the briefs relating to these motions collectively.

## 14 **II. BACKGROUND**

15 The following facts are taken primarily from the Complaint, which is lengthy,  
 16 repetitive and confusing. Mustafanos is African American. Strode is Caucasian. Plaintiffs  
 17 describe several events that appear to relate to Mustafanos’ disputes with his ex-spouse,  
 18 Strode, involving their marriage and property and Strode’s bankruptcy proceedings, and  
 19 with others relating to Mustafanos’ arrest and the guardianship of Clifton, among other  
 20 incidents.<sup>2</sup>

21 The primary allegations relate to Mustafanos’ domestic dispute with Strode. Strode  
 22 had abandoned her marriage with Mustafanos and had not resided at the property located  
 23 at 5400 Railroad Street in Silver Springs (“Property”) for over two years. However, Judge  
 24 Abasturi ordered Plaintiffs to vacate the Property and ordered a sale of the Property and  
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26 <sup>1</sup>The following Defendants have filed their Answer: Gregory Kantz (“Kantz”) and  
 27 Lyon County (ECF No. 20), Laura DePaoli (“DePaoli”) (ECF No. 23), J.D. (ECF No. 25)  
 and Edward Anderson (“Anderson”) (ECF No. 7).

28 <sup>2</sup>Plaintiffs allege that Mustafano is Clifton’s legal guardian. (ECF No. 1 at 18.)

1 for certain personal properties to be left with the Property. On September 14, 2014,  
2 without a court order, Kantz accompanied Strode, Andrew Strode and DePaoli to the  
3 Property, threatened and ordered Mustafanos to let them come in and take Strode's  
4 items. Mustatanos felt threatened and complied. After they left, Mustafanos called Under  
5 Sheriff Torres, who came to the Property and said he would counsel Kantz and directed  
6 Kantz not to go on the Property again. The next day, Strode obtained a Temporary Order  
7 for Protection against Mustafanos. A few weeks later, on October 4, 2014, Kantz came to  
8 the Property with Strode and others and damaged the padlock on Plaintiffs' metal shed.  
9 Strode had organized members of the New Life Foursquare Church to bring trucks and  
10 trailers to help her move her belongings from the Property and had planned for Plaintiffs  
11 to permit entry at the command of Kantz and the Temporary Protective Order. When  
12 Mustafanos refused to allow entry, these individuals left, but Strode had apparently hid  
13 inside the storage shed and would not tell Mustafanos where she hid some items.

14 Plaintiffs complain about alleged wrongful conduct in connection with Strode's  
15 bankruptcy proceedings, Judge Abasturi's orders relating to disposition of personal  
16 properties, proceedings involving Clifton's guardianship, and about the attorneys who  
17 represent Strode and attorneys who represented Mustafanos.

18 The Complaint also contains allegations about general treatment of Plaintiffs  
19 because of his race. For example, Mustafanos called the Sheriff's Department to take a  
20 police report but the deputy who showed up shouted commands at Mustafanos and  
21 ordered him to hold his arms out and spread his legs because he is African American.  
22 Mustafanos was arrested over an incident at Wal-Mart when he was trying to get help  
23 calming down Clifton, but P.J. Baltes, the deputy who showed up, recognized that  
24 Mustafanos is African American and arrested him. While in custody, Mustafanos was  
25 placed in administrative segregation and denied religious services and materials. Another  
26 example is Plaintiffs' dealings with Defendant Anderson, who would make racist remarks  
27 when he was drunk. Anderson had apparently applied for a temporary protective order  
28 against Mustafanos.

1 The Complaint named the State of Nevada, Lyon County, Baltes, Kantz, Torres,  
 2 Strode, DePaoli, Andrew Strode, Anderson, J.D., and David O'Mara (Strode's attorney).  
 3 As noted, Plaintiffs also sue their former attorneys, James Shields Beasley, Jonathon  
 4 King, Day Williams, and Aaron Mouritsen. Plaintiffs allege 22 claims under federal and  
 5 state law.

### 6 **III. MOTIONS TO DISMISS**

7 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which  
 8 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide  
 9 "a short and plain statement of the claim showing that the pleader is entitled to relief."  
 10 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While  
 11 Rule 8 does not require detailed factual allegations, it demands more than "labels and  
 12 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*  
 13 *Iqbal*, 556 US 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). "Factual allegations  
 14 must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S.  
 15 at 555. Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual  
 16 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556  
 17 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Mere recitals of the elements of a cause  
 18 of action, supported only by conclusory statements, do not satisfy Rule 8(a). *Id.* at 678.  
 19 conclusory allegations

20 However, the notice pleading requirements of Rule 8(a) can be violated not only  
 21 "when a pleading says too little," but also "when a pleading says too much." *Knapp v.*  
 22 *Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (citing *Cafasso, U.S. ex rel. v. Gen.Dynamics*  
 23 *C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011) ("[W]e have never held – and we know  
 24 of no authority supporting the proposition – that a pleading may be of unlimited length  
 25 and opacity. Our cases instruct otherwise.") (citations omitted); *McHenry v. Renne*, 84  
 26 F.3d 1172, 1179–80 (9th Cir. 1996) (affirming a dismissal under Rule 8, and stating that  
 27 "[p]rolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair  
 28 burdens on litigants and judges").

1 The court may *sua sponte* dismiss a complaint for failure to comply with Rule 8.  
2 See *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995); *Long v. JP Morgan Chase Bank*,  
3 *Nat. Ass'n*, 848 F. Supp. 2d 1166, 1173 (D. Haw. 2012). The Complaint here says far too  
4 much, and unnecessarily so. While the Court must view the *pro se* Complaint here  
5 liberally, “even a *pro se* complaint is subject to dismissal if the pleading fails to reasonably  
6 inform the adverse party of the basis for the cause of action” as the Complaint fails to do  
7 here. See *In re "Santa Barbara Like It Is Today" Copyright Infringement Litig.*, 294 F.R.D.  
8 105, 108 (D. Nev. 1982). The Complaint fails to identify which claims are asserted against  
9 which Defendants. In fact, Plaintiffs often lump Defendants as a group under the specific  
10 claims for relief. For example, the second claim is for violation of the Nevada Constitution  
11 and alleges that Plaintiffs were deprived of their constitutional rights “[b]y reason of  
12 defendants’ conduct.” (ECF No. 1 at 39.) For these reasons, the Court agrees with the  
13 Defendants who have moved for dismissal that the Complaint is confusing.

14 **A. Albert Torres (ECF No. 9)**

15 The Complaint alleges that Undersheriff Albert Torres responded to Mustafanos’  
16 call about Kantz after the September 14, 2014, incident. Torres allegedly assured  
17 Mustafanos that Kantz “will be ordered not to step foot on” the Property again. (ECF No.  
18 1 at 11, 31.) Because the Complaint lumps defendants together at times, it is not clear  
19 whether Plaintiffs are asserting all claims against Torres or only the conspiracy claim (fifth  
20 claim for relief) which identifies Torres. The Court agrees with Torres that the Complaint  
21 fails to allege his personal involvement in the purported violations of Plaintiffs’  
22 constitutional rights. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (“A supervisor  
23 is only liable for constitutional violations of his subordinates if the supervisor participated  
24 in or directed the violations, or knew of the violations and failed to act to prevent them.  
25 There is no respondeat superior liability under [§]1983.”). Claims against Torres are  
26 dismissed with leave to amend.

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1           **B.       Judge Abasturi and State Defendant (ECF No. 12)**

2                   **1.       State Defendant**

3           The State Defendant argues that it has not waived immunity from liability except  
4 as what is provided for under certain state statutes, such as NRS 41.031(2) which  
5 requires that claims against the State Defendant be brought in the name of the State of  
6 Nevada on relation of a particular department or agency. (ECF No. 12 at 9-10.) The Court  
7 agrees with the State Defendant that it has been improperly named as a party. Moreover,  
8 Plaintiffs cannot sue the State Defendant under 42 U.S.C. § 1983. *See Will v. Michigan*  
9 *Dep't of State Police*, 491 U.S. 58, 65 (1989) (holding that states are not persons for  
10 purposes of § 1983). The Complaint makes conclusory allegations that “the State of  
11 Nevada, the Legislature, Judicial and Executive Branches of its Government, in doing the  
12 things hereinafter described committed these actions towards [Plaintiffs].” (ECF No. 1 at  
13 17.) The response is not any clearer as to the allegations and claims against the State  
14 Defendant. (ECF No. 35.) It is difficult to see how the State Defendant is legally implicated  
15 in the disputes Mustafanos had with his ex-wife, Plaintiffs’ attorneys, Lyon County and  
16 the local law enforcement officers. The Court will therefore dismiss the State Defendant  
17 with prejudice.

18                   **2.       Judge Abasturi**

19           Judge Abasturi argues that he enjoys absolute immunity because the claims  
20 asserted all relate to his alleged actions and decisions in the various disputes referenced  
21 in the Complaint over which he presided. Plaintiffs’ response recite the various decisions  
22 that Judge Abasturi made in the disputes over which he presided that they contend were  
23 wrong. (ECF No. 35.)

24           It is well established that judges who perform judicial functions are immune from  
25 suit. *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991) (per curiam). “Accordingly, judicial immunity  
26 is not overcome by allegations of bad faith or malice, the existence of which ordinarily  
27 cannot be resolved without engaging in discovery and eventual trial.” *Id.* at 11 (citing

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1 *Pierson v. Ray*, 386 U.S. 547, 554 (1967)). In *Mireles*, the United States Supreme Court  
 2 explained the rationale for giving judicial officers absolute immunity:

3           Although unfairness and injustice to a litigant may result on occasion,  
 4           “it is a general principle of the highest importance to the proper  
 5           administration of justice that a judicial officer, in exercising the authority  
           vested in him, shall be free to act upon his own convictions, without  
           apprehension of personal consequences to himself.”

6 *Id.* (quoting *Bradley v. Fisher*, 13 Wall. 335, 347, 20 L. Ed. 646 (1872)).

7           Plaintiffs’ claims against Judge Abasturi are based on challenges to his  
 8 performance of his judicial functions in the handling of Plaintiffs’ disputes. Judge Abasturi  
 9 is absolutely immune from liability for his alleged conduct taken in connection with these  
 10 disputes. Claims against him will be dismissed with prejudice.

#### 11           **C.     P.J. Baltes (ECF No. 15)**

12           The allegations against Baltes involved an incident on August 13, 2012, where  
 13 Baltes allegedly arrested Mustafanos at a Wal-Mart parking lot in Fernley, Nevada. (ECF  
 14 No. 1 at 7-8 & 22- 23.) Baltes argues that any of the five potential claims against him  
 15 would be barred by the applicable statutes of limitations. (ECF No. 15.) In their late  
 16 response, Plaintiffs reiterated some of the allegations in the Complaint, including the  
 17 assertions that “[t]he only reason [Mustafanos] brings this incident is because of a  
 18 Temporary Protective Order Hearing.” (ECF No. 36 at 4; ECF No. 1 at 8.) Plaintiffs allege  
 19 that Defendant Anderson brought up the incident to Judge Abasturi. (*Id.*) Thus, Plaintiffs  
 20 essentially concede that to the extent they are even asserting any claims against Baltes,  
 21 the applicable statutes of limitation have expired. Regardless of whether Plaintiffs dispute  
 22 dismissal of claims against Baltes, the Court agrees with Baltes that the applicable  
 23 statutes of limitations have expired. Claims against Baltes will be dismissed with  
 24 prejudice.

#### 25           **D.     Andrew Strode (ECF No. 18)**

26           Andrew Strode argues that the Complaint is confusing and lumps Defendants  
 27 together such that it is not clear which claim is asserted against which Defendants. The  
 28 Court agrees. It would be an unfair burden on Strode and the Court to figure out Plaintiffs’



1 prolix Complaint. Andrew Strode's motion for a more definite statement (ECF No. 18) is  
2 granted.

3 **E. Day Williams (ECF No. 29)**

4 Williams raises several arguments in support of dismissal, including improper  
5 service of process, expiration of the applicable statutes of limitations and absolute  
6 privilege. With respect to service of process, Williams states that the copy of the  
7 Complaint served on him was not the same as the version filed with the Court and he was  
8 not served with the Summons. A Summons was issued to Williams, but no proof of service  
9 of this Summons has been filed. (ECF No. 4 at 31.) Fed. R. Civ. P. 4(c) provides that a  
10 "summons must be served with a copy of the complaint." The Court agrees that Williams  
11 has not been properly served. Claims against Williams will be dismissed without  
12 prejudice.

13 **F. Aaron Mouritsen (ECF No. 50)**

14 Mouritsen seeks dismissal for insufficient service of process and failure to state a  
15 claim. Service was not made upon Mouritsen pursuant to any of the methods authorized  
16 under Fed. R. Civ. P. 4(e)(2). The Court agrees and will dismiss claims against Mouritsen  
17 without prejudice.

18 **G. Strode (ECF No. 69)**

19 Strode filed a letter which the Court construes as a motion to dismiss for insufficient  
20 service of process. (ECF No. 69.) Strode asserts that she was not properly served  
21 because the documents were left at David O'Mara's office with someone who was not  
22 authorized to accept service on her behalf. (*Id.*) The proof of service of the Summons  
23 supports Strode's assertion that she did not receive personal service pursuant to any of  
24 the methods authorized under Fed. R. Civ. P. 4(e)(2). Claims against Strode are therefore  
25 dismissed without prejudice.

26 Strode's motion for summary judgment (ECF No. 71) is denied as moot. Plaintiffs'  
27 motions for default judgment against Strode (ECF Nos. 75, 89) are denied.

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#### IV. PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTIVE RELIEF

Plaintiffs filed four motions seeking preliminary injunctive relief. (ECF Nos. 3, 37, 40, 55.) The motion for a temporary restraining order appears to seek to enjoin enforcement of Judge Abasturi's orders in Plaintiffs' disputes with Strode, including decisions involving a semi-truck and disposal of the Property and personal properties on the Property. (ECF No. 3.) The second motion (ECF No. 37) appears to be another response to Defendants' motions to dismiss and asks for return of Plaintiffs' semi-truck and properties and damages. The third motion seeks an automatic stay of the state court proceedings to enforce judgment. (ECF No. 40.) The fourth motion (ECF No. 55) is yet another response to Defendants' motions to dismiss and appears to seek an automatic stay of the state court proceedings before Judge Abasturi.

"Injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Id.* at 20. The Ninth Circuit has held that "serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001).

Plaintiffs' four motions for preliminary injunctive relief are frivolous. Plaintiffs have not demonstrated any of the *Winters* factors. Moreover, in terms of the likelihood of success on the merits, Plaintiffs cannot demonstrate likelihood of success on the merits to the extent their claims challenge the decisions of Judge Abasturi. Whether Plaintiffs' claims are limited to such a challenge is not clear from the confusing Complaint, but the

preliminary injunctive reliefs they seek essentially involve a challenge to Judge Abasturi's decisions. However, under the *Rooker-Feldman* doctrine, federal district courts may not exercise subject matter jurisdiction over a de facto appeal from a state court judgment. See *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 414–17 (1923); *D.C. Ct. of Appeals, et al. v. Feldman*, 460 U.S. 462, 482 (1983). State court litigants like Plaintiffs may only achieve federal review of state court judgments by filing a petition for a writ of certiorari in the Supreme Court of the United States. *Feldman*, 460 U.S. at 482.

The Court will deny Plaintiffs' four motions for preliminary injunctive relief. (ECF Nos. 3, 37, 40, 55.)

#### **V. RULE 4(M) DISMISSAL ORDER**

On December 12, 2016, the Court dismissed three defendants for failure to file proof of service: David O'Mara, James Shields Beasley ("Beasley") and Jonathan King ("King") (collectively, "Dismissed Defendants"). (ECF No. 77.) On December 19, 2016, three Summons were erroneously issued to the Dismissed Defendants. (ECF No. 78.) Accordingly, the Court orders that the three Summons (ECF No. 78) are stricken. Beasley's motion to strike fugitive answer and for enforcement of dismissal order (ECF No. 87) is granted. Beasley's Answer to Complaint (ECF No. 86) will be stricken. King's motion to dismiss (ECF No 79) is denied as moot.

#### **VI. CONCLUSION**

It is therefore ordered that the three Summons issued to Defendants David O'Mara, James Shields Beasley and Jonathan King (ECF No. 78) are stricken. Claims against these Defendants have been dismissed. Beasley's motion to strike fugitive answer and for enforcement of dismissal order (ECF No. 87) is granted. It is further ordered that Beasley's Answer (ECF No. 86) be stricken. King's motion to dismiss (ECF No 79) is denied as moot.

It is further ordered that Albert Torres' motion to dismiss (ECF No. 9) is granted. Claims against Torres are dismissed without prejudice and with leave to amend.

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1 It is further ordered that Judge Abasturi and the State of Nevada's motion to  
2 dismiss (ECF No. 12) is granted. Claims against these two Defendants are dismissed  
3 with prejudice.

4 It is further ordered that P.J. Baltes' motion to dismiss (ECF No. 15) is granted.  
5 Claims against Baltes are dismissed with prejudice.

6 It is further ordered that Andrew Strode's motion for a more definite statement  
7 (ECF No. 18) is granted.

8 It is further ordered that Day Williams' motion to dismiss (ECF No. 29) is granted.  
9 Claims against Williams are dismissed without prejudice.

10 It is further ordered that Aaron Mouritsen's motion to dismiss (ECF No. 50) is  
11 granted. Claims against Mouritsen's are dismissed without prejudice.

12 It is further ordered that Deborah June Strode's motion to dismiss (ECF No. 69) is  
13 granted. Claims against Strode are dismissed without prejudice. Strode's motion for  
14 summary judgment (ECF No. 71) is denied. Plaintiffs' motions for default judgment  
15 against Strode (ECF Nos. 75, 89) are denied.

16 It is further ordered that Plaintiffs' four motions seeking preliminary injunctive relief  
17 (ECF Nos. 3, 37, 40, 55) are denied.


18 It is further ordered that Defendants' motions to strike untimely responses to the  
19 motions to dismiss (ECF Nos. 39, 44) are denied. While these responses (ECF Nos. 35,  
20 36) filed after the deadline that the Court extended, the Court will consider them in light  
21 of Plaintiffs' *pro se* status.<sup>3</sup> After filing these untimely responses, Plaintiffs then filed  
22 additional responses. (ECF Nos. 62, 90.) These additional responses are improper and  
23 will be stricken. The motions to strike (ECF Nos. 64, 91) are granted. The Clerk will strike  
24 Plaintiffs' additional untimely responses to Defendants' motions to dismiss docketed as  
25 ECF Nos. 62 and 90.

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27 <sup>3</sup>The Court reminds Plaintiffs that *pro se* litigants must follow the same rules of  
28 procedure that govern other litigants. *United States v. Merrill*, 746 F.2d 458, 465 (9th  
Cir.1984), *cert. denied*, 469 U.S. 1165 (1985).

1 Plaintiffs will be given thirty (30) days to amend their Complaint to provide “a short  
2 and plain statement of the claim showing” Plaintiffs are “entitled to relief” against  
3 Defendants Andrew Strode and Albert Torres. Fed. R. Civ. P. 8(a)(2). Failure to do so will  
4 result in dismissal of the claims against these Defendants with prejudice. If Plaintiffs  
5 choose to file an amended complaint they are advised that an amended complaint  
6 supersedes the original complaint and, thus, the amended complaint must be complete  
7 in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546  
8 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint is  
9 irrelevant; an amended pleading supersedes the original”); see also *Lacey v. Maricopa*  
10 *Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice,  
11 a plaintiff is not required to reallege such claims in a subsequent amended complaint to  
12 preserve them for appeal).

13 DATED THIS 13<sup>th</sup> day of March 2017.

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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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